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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,790	07/18/2003	Gregory K. Jones	2098-117	3508

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EXAMINER
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RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/622,790	<b>Applicant(s)</b> JONES, GREGORY K.	
	<b>Examiner</b> Ula C. Ruddock	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 19-25, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 15, 2006, has been entered.
2. The Examiner has carefully considered Applicant's amendment and accompanying response filed August 15, 2006. The rejections have been maintained.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1-18 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al. (US 2002/0071944) in view of Carroll et al. (US 2004/0023585) or Sheth (US 4,929,303).

Gardner et al. disclose a breathable composite material useful housewrap [0004 & 0032]. The film and nonwoven fabric layers comprise polyolefin resin compositions, such as high density polyethylene and polypropylene [0020]. Additives are used in the film-forming resins and a preferred additive is calcium carbonate [0021]. The nonwoven fabrics can be spunbonded and can comprise polypropylene filaments [0029 & 0030]. The basis weight of the fabrics can be 15 to 140 g/m<sup>2</sup> (or .44 to 4.13 oz/yd<sup>2</sup> [0032]. The film-forming resin composition includes high density

polyethylene [0033]. Regarding claims 11 and 12, multilayered configurations of the nonwoven fabric and breathable film layers, optionally with one or more layers of similar or dissimilar materials, are contemplated. A lightweight laminate having an inner breathable film layer laminated to outer surface layers of continuous filament nonwoven web, such as a polypropylene spunbonded web, provides a composite having a combination of breathability, liquid barrier properties, strength, light weight, and low cost [0025]. As seen in Example 7, the composite has moisture vapor transmission rates in the range claimed by applicant [0074].

Gardner et al. disclose the claimed invention except for the teaching that the nonwoven fabric is a polyethylene cross-laminated open mesh having a basis weight of greater than about 0.7 oz/yd<sup>2</sup> and that the fabric layer exhibits less than about 30% elongation as measured according to ASTM D5034 in at least one direction.

Carroll et al. (US 2004/0023585) disclose a vapor permeable, liquid impermeable composite used in housewrap [0002]. The composite requires polyethylene film-forming resin [0038] and calcium carbonate filler [0039]. The composite further comprises a nonwoven fabric layer that has a suitably open mesh and comprises polyethylene [0043]. Furthermore, the scrim can preferably comprises a scrim available under the tradename CLAF® [0065], which is a specific type of fabric disclosed in Applicant's own specification. Sheth (US 4,929,303) disclose composite breathable housewrap films comprising a breathable polyolefin film heat laminate to a nonwoven HDPE fabric (abstract). The composite also requires a calcium carbonate filler (col 3, ln 27-55). Preferred fabrics include the CLAF nonwoven HDPE fabrics. As seen in Table II, the basis weight of the CLAF fabric is greater than 0.7 oz/yd<sup>2</sup>. ***The fabrics should have an elongation of less***

**than about 30% (col 6, ln 50-52).** It would have been obvious to have used either Sheth's or Carroll's polyethylene nonwoven open mesh as the fabric layer in Gardner's composite, motivated by the desire to create a housewrap with exceptional strength and durability.

Carroll et al. also disclose that the fabric may be woven of any suitable material comprising polyethylene or polypropylene [0043]. It would have been obvious to have used Carroll's woven fabric as the fabric layer of Gardner et al., motivated by the desire to create a laminate having increased dimensional stability.

***It also would have been obvious to have made the fabric of Gardner et al. have an elongation of less than 30% as disclosed by Sheth, motivated by the desire to create a laminate having excellent strength properties.***

#### ***Response to Arguments***

5. Applicant's arguments filed August 15, 2006, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Gardner et al. fail to disclose a breathable material with a layer or coating formed of a crystalline polymer composition as defined in the present application, having greater than 50% of the polymer composition in crystalline form in combination with a low elongation fabric. This argument is not persuasive because "greater than 50%" is also equal to 100% and the polymer of Gardner et al. has 100% crystallinity. Furthermore, it is not seen how Applicant's microporous coating which comprises at least 50% of HDPE differs from Gardner's coating which comprises high density polyethylene [0033]. Applicant also argues that neither the Carroll reference nor the Sheth reference resolves the deficiencies of Gardner et al. This argument is not persuasive because Carroll and Sheth disclose polyethylene cross-laminated

open mesh having a basis weight of greater than about 0.7 oz/yd<sup>2</sup> and a fabric layer that exhibits less than about 30% elongation in at least one direction. Therefore, these references can be properly combined with the Gardner reference to reach Applicant's claimed invention.

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UCR

*UCR*

*Ula Ruddock*  
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Primary Examiner  
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